ICAEW

REPRESENTATION 19/18

REVIEWING THE INTERNAL GOVERNANCE RULES

Issued 9 February 2018

ICAEW welcomes the opportunity to comment on the Reviewing the Internal Governance Rules published by Legal Services Board on 9 November 2017, a copy of which is available from this link

There are over 1.7m chartered accountants around the world − talented, ethical and committed professionals who use their expertise to ensure we have a successful and sustainable future.

Over 149,000 of these are ICAEW Chartered Accountants. We train, develop and support each one of them so that they have the knowledge and values to help build local and global economies that are sustainable, accountable and fair.

We've been at the heart of the accountancy profession since we were founded in 1880 to ensure trust in business. We share our knowledge and insight with governments, regulators and business leaders worldwide as we believe accountancy is a force for positive economic change across the world.

This response reflects the views of ICAEW as a regulator. ICAEW Professional Standards is the regulatory arm of ICAEW. Over the past 25 years, ICAEW has undertaken responsibilities as a regulator under statute in the areas of audit, insolvency, investment business and most recently Legal Services. In discharging our regulatory duties we are subject to oversight by the FRC's Conduct Committee, the Irish Auditing and Accounting Supervisory Authority (IAASA), the Insolvency Service, the FCA and the Legal Services Board.

Amongst ICAEW's regulatory responsibilities;

- It is the largest Recognised Supervisory Body (RSB) and Recognised Qualifying Body (RQB) for statutory audit in the UK, registering approximately 3,000 firms and 9,300 responsible individuals under the Companies Acts 1989 and 2006.
- It is the largest Prescribed Accountancy Body (PAB) and Recognised Accountancy Body (RAB) for statutory audit in Ireland, registering approximately 3,000 firms and 7,500 responsible individuals under the Republic of Ireland's Companies Act 2014.
- It is the largest single insolvency regulator in the UK licensing some 700 of the UK's 1,700 insolvency practitioners as a Recognised Professional Body (RPB).
- It is a Designated Professional Body (DPB) under the Financial Services and Markets Act 2000 (and previously a Recognised Professional Body under the Financial Services Act 1986) currently licensing approximately 2,400 firms to undertake exempt regulated activities under that Act.
- It is a Supervisory Body recognised by HM Treasury for the purposes of the Money Laundering Regulations 2007 dealing with approximately 13,000 member firms.
- It is designated an Approved Regulator and Licensing Authority for probate under the Legal Services Act 2007 (the Act)

MAJOR POINTS

Background

1. The consultation on the future of the Internal Governance Rules (IGRs) pertaining to bodies regulating legal services under the Legal Services Act 2007 (the act) is a timely action taken by the Legal Services Board (LSB) and we welcome the opportunity to comment.

2. The operation of the IGRs has raised debate from the date of their introduction in 2010, and the increased friction between the representative and regulatory arms of certain of the regulators in subsequent years has elevated the concerns outlined succinctly in the consultation document in paragraphs 21 to 31.

3. The consultation document refers to the "Vision for legislative reform of the regulatory framework" published by the LSB in September 2016[1]. That document indicated that for consumer, providers, investors and the public interest it was necessary to have a complete separation of the regulatory and representative bodies, and urged legislative reform to that effect. The Competition and Markets Authority ("CMA"), in its December 2016 report on the legal services market[2], was ambivalent on this issue, and suggested that the Ministry of Justice ("MoJ") should consult on the matter.[3]

4. In its Tailored Review of the effectiveness of the LSB in June 2017[4], the MoJ suggested that more could be done to address some of the concerns through a more innovative use of the IGRs and, in December 2017, Lord Keen confirmed this in his formal response to the CMA[5]. In responding to the LSB Vision Statement in January 2017, we expressed the view that Section 30 of the Act, and amendments to the IGRs and more proactive enforcement of them, could achieve many of the independence objectives the Vision document was aspiring to[6] and we are therefore fully supportive of the initiative now underway.

Approach

5. The consultation document contains 25 questions. We are concerned that the approach seems to have been determined on a bottom-up basis rather than top-down. As a consequence it comes across as highly detailed in nature, and does not address the fundamental objectives and desired outcomes that should be achieved.

6. It also does not set in context the role of independence in relation to the eight statutory objectives and what "good" independence should look like. Indeed, independence is almost taken as an override on all of those objectives. Butterworths, in its early commentary on the Act[7], referred to "the two independence objectives" and perhaps that is how they should be approached, but as objectives to sit alongside and balanced with the other eight, rather than imposed separately.

7. In our view, a critical part of the role of the regulator is to enhance quality of the service provided by the practitioners; it is something we seek to achieve in the area of audit

[1] Vision for legislative reform of the regulatory framework in England and Wales – September 2016
[2] Legal Services Market Study Final Report – December 2016
[3] Ibid p214
[4] Tailored Reviews of the Legal Services Board and the Office for Legal Complaints – 17 July 2017
[5] Letter to the CMA in response to the CMA Market Study from Lord Keen 19 December 2017
[6] Ibid p24
[7] Butterworths Guide to the Legal Services Act 2007 – Thorne & Miller p43

with our oversight body, the Financial Reporting Council. We would have thought that a quality output in the delivery of legal services is fundamental to public and consumer confidence underpinning the rule of law. Three of the statutory objectives lead us in that direction and, therefore, quality of service and quality of decision making by regulators should be one of the key factors influencing the approach to independence.

8. The approach taken in the consultation document appears to make a number of assumptions which may not stand up to scrutiny. The document starts from the premise that interference in the regulatory activities by the representative body is a given, and that all steps possible should be put in place to eliminate that interference. No judgement is exercised as to indicate if that interference is warranted or appropriate, or if there should be degrees of proportionality around it. Rather it is assumed that the profession is inherently resistant to regulation and will inhibit it at every point possible which is certainly not the case in relation to ICAEW where members press on many issues for tighter or greater regulation in order to force out or expose the "bad apples" who may bring the profession into disrepute if they are allowed to continue to practice.

9. There is a contrast here with the Act itself which does not come at the independence issue on the basis of eliminating all interaction and interference. Rather it refers to the need for there to be no prejudice, the need for the availability of reasonable resources, and reasonable practicality. It does not prohibit the existence of regulatory and representative functions within a unitary body, nor prescribe separation. Rather it requires a methodical series of steps that are proportionate and leverage the representative function to the extent that they can aid the regulatory processes and meet the statutory objectives.

10. It is also worth referring to the detailed observations contained in the Tailored Review[8];

> 3.44 The review suggests that the LSB could do more within the current framework, particularly around providing visible assurance to the professions and the public that regulation is carried out independently of the professional representative bodies. In providing this assurance the LSB should consider both cases of actual interference, and how it can mitigate issues with the perception of interference. The review notes that the LSB has committed, via its 2017/18 Business Plan, to a review of its internal governance rules. The review team welcomes this and is of the opinion that any changes should be made within the existing legislative framework.

11. This refers to mitigation and therefore expresses the approach as ideally being one of risk management. It does not require 100% adherence but rather the deployment of sufficient steps to ensure that independence is seen to be achieved. We believe conceptually this would be a helpful approach in setting the IGRs at an appropriate level.

12. We would also draw reference to the LSB's own required outcomes in the area of diversity[9] which, inter alia, require the regulator to work with stakeholders including the professional bodies to achieve a wider series of outcomes. This collaborative approach, which we endorse, is something we believe should be part and parcel of the wider governance framework. In other words, the IGRs and their implementation at a

[8] Ibid p24
[9] Encouraging a Diverse Workforce – February 2017 p18

body level should be ones that both the regulatory and representative arms are both in agreement in signing up to and enforcing.

13. In our response to the LSB Vision, we referred to a number of benefits that arose out of the close relationship between the regulatory and representative arms, not least in the area of service quality in non-reserved as well as reserved areas of legal service[10]. We believe these qualities can be sustained and preserved to the benefit of the consumer and the public interest as well as to the reputation of the profession and the rule of law.

Barriers in the existing framework

14. It is clear in the preamble to the consultation that one of the key difficulties faced by most of the regulatory bodies is that Parliament has given the regulatory powers under the act to the representative bodies which then have to report to the LSB on the effective conduct of regulation, even though those powers have been devolved to a subsidiary regulatory body. The statutory responsibility is itself a barrier to independence, as the representative body then does need to carry out due diligence and assure itself of compliance by its subsidiary regulatory body in order to make such representations. Inevitably quality then becomes an issue, and if funding of the subsidiary body is routed through the representative body that also becomes a problem.

15. The consultation document refers to the symptoms of this impasse, and then appears to seek to deal with the symptoms, not addressing the fundamental problem behind them. This may be because the only solution is seen as being amendment to statute. However we believe, drawing on our own experience of regulating other professional services and interacting with other oversight bodies, that a series of checks and balances can be put in place – the MoJ's mitigation factors – that enable the two bodies to operate side by side and achieve the independence outcomes. This will involve clear lines of devolution, clear reporting lines, and a recognition by the representative body that it cannot direct or negotiate the regulatory approach of its subsidiary body. The responsibility for reporting compliance should fall to the CEO of the regulatory body, and the LSB should place prime reliance on his / her representations, not needing to refer to, or deal with, the representative function save as to confirm that there are no matters that should be brought to their attention.

16. In the case of ICAEW, all regulatory responsibility, outside of probate (which is governed by the Probate Committee) is devolved by Council to Professional Standards and the ICAEW Regulatory Board, and the Executive Director is responsible for reporting directly to our oversight bodies including the FRC, the Insolvency Service, FCA and the LSB. The CEO of ICAEW has no jurisdiction over those matters as Council has not devolved the powers to him. Indeed, the CEO does not attend Regulatory Board meetings and is not involved either with the regulatory strategy or the day to day operations of the Professional Standards department. The model was adopted in 2015 on the advice of a working group under Sir Christopher Kelly following representations from inter alia the LSB that the previous operating model was not sufficiently independent. Whilst it may not be the perfect template for other organisations, the attributes of the model, such as independent recruitment panels and direct access to supervisory bodies could be a helpful element of future IGRs.

[10] ICAEW Response to the LSB Vision for legislative reform of the regulatory framework in England and Wales – 11 January 2017 paragraph 59

17. In 2009 Lord Hunt of the Wirral published a report on the governance framework operating between the SRA and the Law Society[11]. In it he referred to the twin pillars of regulation – the professional body and the regulatory arm – upholding the quality standards. The report also suggested a separate appeal governance body to resolve areas of deadlock between the two bodies should they arise. The idea was drawn upon by Sir Christopher Kelly in the recommended formation of an ICAEW liaison group that would provide an arbitration mechanism if required. This is a nuclear option and one that has not had to be applied to date in the 2 years the model has been operating. Ironically the recommendation was not taken up at the time by the SRA and Law Society. The presence of a similar safety valve may be of value to other regulatory bodies.

RESPONSES TO SPECIFIC QUESTIONS

Q1: We welcome evidence on (i) the general nature, frequency and impact of disagreements on regulatory independence matters, and (ii) how the IGR are used and their effectiveness in moderating such disagreements.

18. ICAEW as a legal services regulator, and indeed as a regulator of audit and insolvency for over 25 years, has not encountered disagreements between its regulatory arm and its representative functions during that time. The independence of the regulatory function, established in 1995 and brought up to date in 2015 by the reforms of Sir Christopher Kelly, has always been paramount in the discharge by ICAEW of its regulatory duties.

19. The Probate Committee, established in 2014 to supervise the conduct of probate, has been able to operate without interference since that time. The IGRs have not had to be called upon during that time.

Q2: What are the benefits and costs to stakeholders of operating under the existing IGR framework?

20. The text preceding this question refers to the current mechanism where the representative body is the formal AAR and therefore needs to carry out due diligence as to whether its associated regulatory body is fulfilling its duties on its behalf. This potentially overlaps with the oversight exercised by the LSB in this area.

21. As noted in the consultation commentary, this approach was partly to address concerns on inception just after the passing of the Act, and given the separate bodies were new and not tried and tested, it is understandable that additional checks and balances were required by both the LSB and the representative bodies. Now that both the regulatory bodies and the LSB have a number of years of experience, we would suggest that those concerns have now been fully addressed and therefore the reporting lines should be amended to reflect the mature dynamic now operating. These should involve;

    a) The representative bodies delegating the whole regulatory responsibility to the regulatory arm

    b) The regulatory arm being empowered to report direct to the LSB on its performance, and copy the representative arm for information

[11] The Hunt Review of Regulation of Legal Services October 2009 p51

c) The regulatory body should report on an information only basis to the representative arm on the performance of its activities, perhaps on an annual basis

d) The LSB should only be contacting the representative arm in the event that the regulatory arm be falling short in its duties, and should do so in concert with and not separate to the regulatory arm

In the case of ICAEW, this is a model that is now largely in place.

Q3: Do you agree with option 1: no change to the IGR? Why or why not?

22. We do not agree with Option 1 suggesting that no change is required to the existing IGRs. The time is ripe for the LSB to revisit the scope and purpose of the IGRs and to adapt them to the regulatory structures now in place rather than those emerging 8 years ago. The 8 years have provided a series of learning points as to where the stress points are, and in addition regulatory models have evolved in other sectors than can provide further learning points.

Q4: What information do AARs need to receive from their regulatory body, and why? To what extent can these needs be met through transparency (and vice versa), thereby removing the need for further engagement?

23. We have set out above in paragraphs 20 to 21 our view that the AAR construct is based on structures established in the years immediately after the Legal Services Act in an attempt to reflect the legal responsibility and concerns about the effectiveness of fledgling bodies. Now the track record is proven, the reporting lines to the LSB need to be amended, and the interaction between the regulatory and representative one needs to be an information sharing one rather than a negotiating one.

Q5: Do you want more intervention by the LSB in disputes between AARs and regulatory bodies? If so, what form should this intervention take?

24. We believe the LSB has a key role to play in ensuring that the separation of duties between the representative and regulatory functions is clearly defined, and that it can act as honest broker of last resort when disputes arise. We have criticised the consultation document for its failure to identify clear high level outcomes. One of these must be the effective functioning of the legal services market place and the functionality of the operational bodies within it be they representative or regulatory. Where there is discord between those bodies, this will be disruptive to the practitioners sitting below them and sows doubts in the eyes of the consumer. The eight statutory objectives therefore point to the LSB needing to be more proactive in this area.

25. We do not think the role of the LSB in these instances to be one of arbiter. Rather they should be a convenor or arrange mediation with a third party to iron out these difficulties and come to a common agreed positioning.

Q6: Do you agree with option 2a: making incremental changes to the IGR? Why or why not?

26. We believe this approach is not sufficiently ambitious to achieve the changes needed that we have outlined above. The plugging in of additional rules will simply make more ungainly a series of criteria that are out of step with current governance best practice. The LSB has received the encouragement of the Ministry of Justice and the regulators themselves to be more innovative in the deployment of the IGRs. Incremental change will not achieve that objective.

27. The consultation welcomed comment on the underlying four principles specified in the Schedule (governance, appointments, strategy and resources). We are not convinced that the four are comprehensive enough. It is clear that the financial independence of the regulatory body is a key stress area and that, perhaps, should be addressed as one of the principles in its own right. The principle should be focusing on the certainty of income being received by the regulatory body and the control over its setting and disposition.

28. However, we believe that the principles as expressed appear to be tactically driven rather than explored as outcomes. This restricts flexibility and creates gaps which the consultation document goes on to suggest need to be filled by more rules.

Q7: What incremental changes should the LSB prioritise, and why?

Q8: What do you anticipate the impact of your proposed change(s) would be, and why?

29. As we do not view incremental change as the appropriate route we have no observations in response to these questions.

Q9: Do you agree with option 2b: making more extensive changes to the IGR? Why or why not?

30. We believe this is the minimal step the LSB should be taking in updating the IGRs. As we have indicated above, the time is right for an overhaul. We have noted above that the core areas of functionality are reasonable ones upon which to continue, be it with an additional one around income. The process of revision therefore should be about expressing these as outcomes and then translating those into a series of examples of likely features. This approach would provide the IGRs with an ethical underpinning that would serve to cover potential gaps rather than enable circumvention.

31. We agree with the observation in the consultation that the financial inter-dependency of the membership and regulatory bodies appear to be the prime source of contention, with mixed views on the accountability for the deployment of funds when they are channelled through the representative organisation. The introduction of a fifth principle addressing income stream would get to the heart of this fairly quickly.

32. We have suggested above that a risk based approach might be a better framework to apply that each professional body/regulatory body can adapt to reduce the risk of interference rather than simply eliminate it.

Q10: What new obligations would you recommend the LSB prioritises, and why?

33. The obligations should be focused around the independence of the decision making, of the funding of the regulatory functions and of the recruitment process. Examples should include processes in place to mitigate the risk of undue influence by the representative body in the approach to regulation by the regulatory body.

Q11: What do you anticipate the impact of those proposed new obligations would be, and why?

34. The impact of the proposed new obligations would be to allow both the representative and regulatory bodies to focus on quality issues and the effectiveness of regulatory policy rather than have protracted debates around the tactical application of funds.

35. The proposed change would define separate lines of responsibility and the two bodies would not have mixed agendas. The representative arm would then still be in a position to challenge proposed regulatory policy from a standpoint of members' interests, but without the means to influence the outcome by the withholding of, or the failure to allocate, sufficient funds

Q12: Do you agree that the definition of AAR should be revised? Why or why not? If so, how do you think the definition should be revised, and why?

36. We agree this definition should be revised, even abolished so that a more consistent framework is used for the assessment of the various bodies.

Q13: What do you anticipate the impact of revising the AAR definition would be, and why?

37. The current separate approach suggests that the ARs are at a significant advantage to the other regulatory bodies. This is a source of discontent and a challenge to the underlying quality of the bodies involved. In practice, the differences are small. We believe a common set of governance rules should apply across all the regulatory bodies irrespective of their structural relationship with their representative bodies.

Q14: Do you agree that the definition of regulatory independence should be revised? Why or why not? If so, how do you think the definition should be revised, and why?

38. We agree not only that the definition of independence should be revised but that its context should be judged against the 8 objectives, so that it is applied in balance with those objectives rather than pursued in its own right at the expense of those objectives. In particular, we believe that the rule of law and the underlying quality of legal services provision risk being compromised by over-zealous application of independence concepts where complete separation from the representative arm is held up as the only way in which full and effective regulatory independence can be achieved.

39. Independence is something that can be applied in degrees. The expectations of section 30 of the Act are not loose, but equally, there is in the Act a clear recognition that the representative body and regulatory bodies need to operate side by side and that this should be regulated by rules. This means that total banishment of any professional involvement is not a proportionate response to that requirement.

40. The rules of independence in governance applied for the auditing profession are set out in the 2014 EU Audit Directive[12] and expressed as follows;

    The [regulatory body] shall be organised in such a manner that conflicts of interest are avoided.

    This is not prescriptive in framework and allows each of the 28 EU member states to leverage their professional bodies within existing organisation structures to secure a strong regulatory regime whilst at the same time ensuring independence issues are formally addressed. The wording automatically leads the bodies to apply a risk based approach, and this is the approach also alluded to in the Ministry of Justice's review of evidence.

[12] EU Directive 2006/43/EC as amended by Directive 2014/56/EU Article 32(4b). Incorporated in Companies Act 2006 Schedule 10 paragraph 2(2)(c) by The Statutory Auditors and Third Country Auditors Regulations 2016 SI 2016/649

41. The approach taken in the IGRs around the governance also applies independence very widely, treating any person who has a legal connection as a taint on independence, whereas other professions are less rigorous in their approach with no apparent problems arising to the extent that complaint is made by oversight regulators or other government departments. Part of the problem here is that a distinction is not made between those who are practitioners, and those who are active participants in the professional body.

42. In 2012, a review by the then Council for Healthcare Regulatory Excellence on the regulatory framework for healthcare professionals observed that credibility of the regulatory body both in the eyes of the consumer and the service provider were fundamental to an effective regulatory body[13]. The General Medical Council and the General Dental Council accordingly concluded in their changes to governance that parity of lay and professional members should apply on their committees, noting that the professional members should be there as experts not as representatives of the professional bodies.[14]

43. There are a number of principles espoused here which we believe are key to the regulatory governance and independence;

    a) Those regulated need to have as much confidence in the conduct of regulation as the public

    b) There is an important role for professionals in helping lay members understand the challenges within the profession so as to inform the practicality and effectiveness of regulation

    c) Distinction should be made between the role of professionals simply engaged in practice versus professionals involved in the governance of the representative body. As the GMC require, the professionals should be there as experts not representatives.

44. On the latter point we believe that the existing IGRs and their rules around lay members exclude too wide a part of the profession, and equally are not robust enough with regard to the calibre of a board or committee as a whole. The LSB IGRs base their definition of lay in accordance with schedule 1 paragraphs 2(4) and 2(5) of the act, which precludes those who may have started in the profession many years ago but moved on to other things and are no longer active in the legal profession or its member bodies such that the risk of undue influence is very low. We believe this unnecessarily restricts the quality pool of those in society who can fulfil those roles and this is not in the interest of either the rule of law or indeed access to justice for the profession itself. We also consider the obligations in paragraph 3 of Schedule 1 should be applied to ensure the board is of adequate quality.

45. In the glossary to the consultation the term "lay person" is defined as "a person that is not an expert in a specified field". This is quite a confusing explanation, and does not sit comfortably with the regulation of alternative business structures (ABS) where principals may for example be experts in diverse areas such as medical or construction. The ABS's bring multiple skills bases under legal regulators' supervision and the rules around lay member need to be sensitive to the mix of professional and

[13] Council for Healthcare Regulatory Excellence Report Board Size and Effectiveness advice to the Department of Health regarding health professional regulators – September 2011 paragraph 3.14

[14] General Medical Council and General Dental Council consultation on (Constitution)(Amendment) Orders – August 2012 p19 & 20

the proportionate risks involved. ICAEW for their part have defined lay as non-accountant and non-legal for the purposes of legal service regulation which we believe is the proportionate approach to this area.

Q15: Do you agree with option 2c: a new 'gateways' approach to the IGR? Why, or why not?

46. We believe that tearing up the current framework is a step too far, and that a more innovative use of the framework as we have suggested above is the best approach. That provides some form of continuity and ease of transition.

Q16: What gateways (i.e. permissible channels for information and assurance to flow between regulatory bodies and their AARs in the normal course of events) do you think would be needed, and why?

47. For regulation to be effective and achieve the key outcomes, it is essential that there are channels of communication between the two bodies. This clearly cannot be open house but it should be possible for mechanisms to be put in place that reduce the risk of regulatory capture yet ensure that the 8 objectives are sustained at appropriate quality levels. We have suggested above how this might be approached.

Q17: : Do you think independent standards or benchmarks could be used to indicate when AARs are able to seek additional assurance? If so, what are these, and why?

48. We are not convinced that the reporting and accountability model should work this way. The AAR should devolve its regulatory responsibility in its entirety to the regulatory body, and the LSB deal principally with that body. The AAR representative body should have simply a watching brief and both the regulatory body and the LSB provide occasional bulletins to the AAR confirming the processes are in order. This does not require a standards approach but rather a broad outcome and tactical examples.

Q18: What action do you think an AAR should be entitled to take when seeking additional assurance in the circumstances described above, and why?

49. The entitlement should solely be one of being kept informed. The responsibility for delivery should lie with the regulatory body and the accountability lie there.

Q19: What do you anticipate the impact of the 'gateways' approach would be, and why?

50. The gateways approach outlined is an approach that though positioned as a major change appears to us to be an attempt to apply further sticky tape on an unwieldy structure. It could ease member discomfort and allow the regulatory arm to operate more freely, but still runs the risk of falling foul of accusations of undue influence. The relationship needs to be more rigorously defined at the outset and then the communication flows will be more straight forward to determine without the need for special rules.

Q20: What, if any, alternative approach to reviewing the IGR do you suggest the LSB should consider, and why? What impact do you think that would have, and why?

51. As many have observed, a statutory approach in setting out the roles of the representative and regulatory bodies would have been perhaps an easier option to apply. However that seems to not be an available option in the near future. The LSB needs to combine the role of rule setter, rule evaluator and provide a back-up forum for resolution of disagreement between the two arms. We have set out above our view how a review might be applied, which is based on the four pillars plus one of the key governance areas already in play, expressing these as desired outcomes, then adding examples of how this might play out in practice.

Q21: Do you agree with reintroduction of DSC to assure compliance with the IGR? If so, what form should this take and why? What do you anticipate the impact of DSC would be, and why?

52. Yes. This requires the bodies to conduct regular hygiene reviews of their regulatory function and address and plan for potential areas of difficulty This encourages a more pro-active approach to regulation rather than reactionary. Although it may not be desirable, it should be possible for the regulatory and representative bodies to offer conflicting views on the effectiveness of the governance arrangements. These differences would then act as a catalyst for resolution rather than letting positions fester and take up excess management time.

Q22: Do you agree with IGR compliance becoming part of regulatory performance assessments? If so, why? What do you anticipate would be the impact of IGR compliance becoming part of regulatory performance assessments, and why?

53. This would not be particularly burdensome. It would aid the bodies in setting their transparency around governance. Ideally key questions the LSB might raise around governance could be answered by bodies linking their response to their relevant website pages. The FRC ask for information on an annual basis about the audit regulatory committee, its membership, number of meetings and also attend one or two of their meetings. This intelligence and approach could help the LSB's oversight of this area.

Q23: Do you agree with the existing option for proactive reporting of non-compliance? If so, why? What do you anticipate the impact of this would be, and why?

54. Proactive reporting does ensure that key issues are addressed at a timely stage and the oversight body is able to give timely advice rather than be asked to assess an unsuitable attempted resolution further down the line. The use of the annual return medium noted in paragraph 52 would facilitate more easily the pro-active reporting.

Q24: Do you agree with third party assurance? If so, why? What do you anticipate the impact of this would be, and why?

55. We are not sure the extent that third party assurance would aid in the assessment. Any area of contention would require the LSB's involvement so rather than involve two separate organisations with duplicate cost there should be a single route of audit, namely through by the LSB itself,

Q25: What, if any, alternative approaches to assuring compliance with the IGR do you suggest the LSB should consider, and why? What do you anticipate the impact of these would be, and why?

56. There are various measures we believe the board could usefully apply. These include sitting in occasionally on recruitment panels and regulatory meetings to monitor the conduct of oversight, and to see first hand how issues of independence are addressed.